

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8286 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

2. To be referred to the Reporter or not? No. @

A 15x25 grid of small, stylized, light blue, rounded rectangular shapes arranged in a regular pattern.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

MAHA GUJARAT GENERAL KAMDAR SABHA

Versus

STATE OF GUJARAT

Appearance:

MR TR MISHRA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR KS JHAVERI for Respondent No. 3
MR DEEPAK V PATEL for Respondent No. 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/08/98

CAV JUDGEMENT

Rule. The learned advocates appearing for the respective respondents waive service of notice of rule.

2. The petitioner-Maha Gujarat General Kamdar Sabha, a labour union has filed the present petition on behalf of the workmen of respondent no.4-Indian Pharma Caps and Chemicals Private Limited, seeking the following reliefs:

"(A) That Your Lordships be pleased to issue an order and or direction or writ in the nature of mandamus or any other appropriate write, order or direction to the respondent No.1 to initiate the proceedings for breach of section 25-O, punishable under section 25-R of the Industrial Disputes Act, 1947."

"(B) That Your Lordships be pleased to issue direction to the respondent to permit the petitioner union to initiate such proceedings in the proper court of law for breach of section 25-O punishable under section 25-R of the Industrial Disputes Act, 1947."

"(C) Pending admission and final disposal of this petition, Your Lordships be pleased to issue an order restraining the respondents from forcibly vacating the quarters which the workmen of the company are occupying in the company premises, and be further pleased to restrain the respondents from interrupting or interfering in the peaceful use of the residential accommodation by the workmen in the company premises."

"(D) Any other relief to which this Hon'ble Court deems fit and proper in the interest of justice

together with costs."

3. It is claim of the petitioner that the respondent issued a notice on 29.10.1997 declaring closure of the factory and has illegally closed the factory. The petitioner has moved the respondent no.4 by letter dated 6.11.97 informing that the management has illegally closed the factory in contravention of Chapter V-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). The claim of the petitioner that the petitioner-union had also contacted the Assistant Commissioner of Labour and requested him to take appropriate steps in view of the fact that 140 employees have been rendered unemployed due to arbitrary and abrupt decision of the respondent-company in closing down the establishment in contravention of Chapter V-B of the Act of 1947. The petitioner-union had also requested the Assistant Commissioner of Labour for initiating proceedings for acting in contravention of section 25-O of the Act of 1947. But no action was taken on their representation. It is further claim of the petitioner that the respondents are forcibly insisting the workmen to go away from the quarter occupied by them. They further want to restrain the respondents from interfering with the peaceful use of the residential accommodation of the workmen in the company premises.

4. The respondent no.3 has contested the petition by filing affidavit-in-reply. It is contention of respondent no.3 that the respondent no.3 is the creditor of the respondent no.4. The respondent no.4 owes a sum of Rs.2,18,77,182.80ps. (Rupees Two Crores Eighteen Lacs Seventy Seven Thousand One Hundred Eighty Two and Eighty Paise only) and Rs.4,04,59,508.00 (Rupees Four Crores Four Lacs Fifty Nine Thousand Five Hundred Eight Only) to the respondent no.3. In order to recover the said amount, the respondent no.3 had filed Civil Suits No.1412 and 1413 of 1992 in the High Court of Bombay. In the said suit a decree on admission was given on 23rd November, 1995, and as per the said consent decree, the respondent no.4 was ordered to pay to the respondent no.3 the aforesaid amount on or before 31st May, 1996, with an interest at the rate of 15.5% per annum from 1.10.1995. As per the terms of the said consent decree, the respondent no.4 did not pay the amount though the respondent no.3 had sent repeated intimation. As per the terms of the consent decree, the respondent no.4 was to hand over the possession of his property to the Court Receiver but the respondent no.4 had failed to do so. Ultimately the respondent no.3 moved the High Court of Bombay and on 23rd September, 1997, the Hon'ble Bombay

High Court ordered to take forcible possession of the suit properties which came to be implemented by the respondent no.3 and the said properties came in possession of the Court Receiver. It is contended that the petitioner has filed this proceedings without joining the Court Receiver, and therefore, the petitioners are not entitled to get any relief. It is contended that this petition is filed at the instance of respondent no.4. It is contended that petitioner-union are not entitled to get any protection as the properties have gone in possession of the Court Receiver.

5. The respondent no.4 has also filed the affidavit-in-reply. He contended that the respondent no.4 was in a strained financial condition and therefore could not pay it's dues. It is further stated that the property has gone in possession of the court receiver on 22.10.97 and because of the same, the respondent had to issue a closure notice. It is further contended that respondent no.4 never insisted the petitioner-workmen to hand over possession and thus there is no cause of action against the respondent no.4.

6. When the matter come up for hearing, Mr. Zhaveri learned advocate appearing on behalf of respondent no.3, submitted that the claim of the petitioner that they are being forcibly evicted from the premises is not correct. The respondent no.3 and the Court Receiver will take appropriate steps and the person occupying the property of the company will be removed by due process of law.

7. It must be also mentioned here that the petitioner-union has not come before the court with clean hands. They must be aware that the court receiver had taken over the possession of the property belonging to the respondent no.4, but in spite of this they had not disclosed the fact in their petition. It was submitted before me by learned advocate for the petitioner Mr. T.R. Mishra, that the workmen of the petitioner-union should be paid closure compensation and for that purpose they would take appropriate proceedings by raising an industrial dispute. At this stage, in view of the present circumstances of the case, it is not possible for this court to pass any such order. As regards the claim of the petitioner for taking action against the respondent no.4 under section 25-O, I will only issue direction to the respondent no.1 & 2 to take appropriate decision on the representation made by the petitioner within eight weeks from today and to intimate the petitioner about its decision. Except giving this direction, no other relief could be granted to the

present petitioner in view of statement made by Mr. Zhaveri advocate for respondent no.3 and in view of the conduct that they have not come before the court with clean hands.

8. Thus, I hereby direct the respondent no.1 and 2 to take an appropriate action on the representation made by the petitioner.

9. Thus in view of the above, the petition will have to be disposed of and it is accordingly disposed of with no order as to costs. Rule is discharged.

syed*